

## ENVIRONMENTAL REVIEW

*Posted 02/02/10* **Can a Responsible Entity (RE) allow a recipient, subrecipient, or third party to purchase an existing single family home (one to four units) before the HUD environmental review of the property is complete when NSP funds will be used for acquisition and/or rehabilitation or demolition of the home?**

An RE can allow a recipient, subrecipient, or third party to enter into a purchase contract for an existing 1 to 4 unit house before the RE has completed the environmental review, provided that:

- (1) the purchase contract includes the appropriate language for a conditional contract (see below);
- (2) no transfer of title to the purchaser or removal of the environmental conditions in the purchase contract occurs unless and until the RE determines, on the basis of the environmental review, that the transfer to the homebuyer should go forward, and the RE has obtained approval of a Request for Release of Funds and environmental certification; and
- (3) any deposit using NSP funds or other funds is refundable if the conditions are not met, or if non-refundable, is nominal (\$1000 or less).

The following language, or similar language, must be included in the purchase contract: Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until [Responsible Entity] has provided Purchaser and/or Seller with a written determination, on the basis of a federally required environmental review and an approved request for release of federal funds, that purchase of the property by Purchaser may proceed, subject to any other Contingencies in this Contract, or may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property. [Responsible Entity] shall use its best efforts to conclude the environmental review of the property expeditiously.

The RE must complete the environmental review of the property pursuant to HUD regulations at 24 CFR Part 58 and receive approval of a Request for Release of Funds before the RE provides its written determination that the purchase of the property may proceed. If the environmental review requires conditions to mitigate any environmental impacts, then the RE (if it is not the Purchaser) should enter into an agreement with the Purchaser to ensure that the conditions will be undertaken.

*Posted 11/7/08* **For a single family home that is being demolished and rebuilt, what type of environmental review will be required under NSP1? Is a demo/rebuild considered rehabilitation or new construction? If new construction, will a full Format II be required?**

The level of environmental review required depends upon the program design and project description. The responsible entity should consider the use of the categorical exclusion at §58.35(a)(4) which reads:

§58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see §58.2(a)(3)) in which a normally

excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in §58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) *Categorical exclusions subject to §58.5.* The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in §58.5:

(4)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section). “Individual action” as used in §58.35(a) refers to an individual approval action about the particular dwelling unit(s) and may include new construction, demolition, and/or reconstruction (demolition and new construction). However, note that this categorical exclusion does not apply to rehabilitation of a building for residential use.

A responsible entity (RE) may apply the categorical exclusion at §58.35(a) on an individual application basis, allowing the RE to use this categorical exclusion when an individual applicant is submitting an application for construction, demolition and/or reconstruction of dwelling units. For instance, if the RE designs a program where individual applicants will be submitting applications for new construction of up to four dwelling units, then each individual application may be considered to be categorically excluded per §58.35(a)(4)(i). Another example is if the RE designs a program where individual applicants will be submitting applications for a project of five more housing units on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site, then each individual application may be considered to be categorically excluded per §58.35(a)(4)(ii).

However, it should also be noted that if the program is clearly designed and intended to develop a specific block/neighborhood or other limited geographic area, then an environmental assessment for the program/area will be required.

Posted 11/13/08

**After an NSP1 grantee acquires real property with its NSP1 funds, are subsequent transfers of real property subject to HUD’s environmental compliance review requirements?**

All HUD environmental compliance review requirements apply only to federally assisted projects. Therefore, as long as the CDBG requirements apply to the transfers of title and or the use of the property as a result of the transfer, HUD’s environmental review requirements also apply. For NSP1 this means that environmental review requirements will apply:

1. When an NSP1-acquired or -assisted property is sold to a homebuyer, to some other purchaser such as to operate a multi-family building, or for a redevelopment purpose, and no more NSP1 funds will be used;  
or,

2. When all NSP1 funds that have been committed to the property have been expended on the property (no more than four years after receipt of funds); or
3. When a land-banked property is dedicated to a permanent use (in no more than ten years).

*Posted 11/13/08*

**How does the NSP1 Request for Release of Funds process apply to a locality receiving both a direct NSP1 allocation and NSP1 funding from the state program?**

There have to be two separate Requests for Release of Funds from the NSP1 grantee. One would be directed to HUD for the direct NSP1 allocation the locality receives and the other would be directed to the State for the NSP1 State formula funds.

*Posted 11/13/08*

**Are localities receiving NSP1 funding from the state program required to participate in the National Flood Insurance Program?**

No. Localities receiving NSP1 funding from the state program are not required to participate in the National Flood Insurance Program. However, any locality receiving both NSP1 State formula funds and a direct NSP1 allocation, can only use its direct NSP1 allocation for acquisition or construction (including rehabilitation) of buildings in a special flood hazard area (SFHA) if it is participating in the National Flood Insurance Program.

*Posted 11/20/08*

**If an environmental review and request for release of funds is completed for a project/activity in a particular location, is it necessary to perform separate environmental reviews for replicated projects/activities that take place at the same location?**

No. HUD regulations (24CFR Part 58.35(b) (7) allow a responsible entity that has successfully completed the environmental review, and the request for release of funds and certification of compliance (RROF) process has been approved by HUD to add supplemental funding to the project without performing a new environmental review or RROF if the activities, location and environmental conditions have not changed from the original review.

HUD regulations 24CFR Part 58.35(b) states:

*“Categorical exclusions not subject to §58.5. The department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in §58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the*

award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) applies. The recipient remains responsible for carrying out any applicable requirements under §58.6.”

HUD regulations 24CFR Part 58.35(b)(7) describes one such activity. It states:

“Approval of supplemental assistance (including insurance or guarantee) to project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under §58.47”

*Posted 11/20/08*

**Under CDBG environmental regulations, we are required to complete a formal environmental assessment or EA (per 24CFR58.36) when acquiring/rehabilitating/disposing of five or more housing units that are within 2,000 feet of each other. An EA can take 3-4 months to complete through the FONSI/NOI/RROF/ROF process and may cost in excess of \$10,000. One of our strategies for the NSP1 program is to focus resources on geographical target areas, which could involve acquiring and rehabilitating owner occupied single units within 2000 feet of each other. Under the NSP1 guidelines and requirement for commitment of funds within 18 months, would acquiring and rehabilitating single units within 2000 feet of each other require an EA?**

The environmental regulations at 24 CFR 58.35(a)(3)(i) and 58.35(a)(5) do not require an environmental assessment when acquiring, rehabilitating and/or disposing of five or more existing housing units that are located within 2,000 feet of each other. Generally, rehabilitation, acquisition and disposition actions are categorically excluded from the National Environmental Policy Act (NEPA) and, absent extraordinary circumstances (see §58.2(a)(3) for definition of extraordinary circumstances), an Environmental Assessment is not required.

Rehabilitation of residential buildings (with one to four units) is categorically excluded from NEPA, but is subject to review under the federal environmental laws and authorities at §58.5 when the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or wetland. (See 24 CFR 58.35(a)(3)). Acquisition or disposition of an existing structure is also categorically excluded from NEPA, but subject to review under the federal environmental laws and authorities at §58.5 provided that the structure will be retained for the same use. (See 24 CFR 58.35(a)(5)). In accordance with 24 CFR 58.35(a)(6), combinations of categorical exclusions listed in §58.35(a) may be combined, allowing for the acquisition, rehabilitation and disposition of an existing single family house to be categorically excluded from NEPA.

Posted 11/20/08

**In completing the environmental Appendix A forms, if we acquire vacant residential structures, rehabilitate and resell them as residential structures (without any change in the number of dwelling units) would these actions be considered an increase in residential density?**

No. It is HUD policy that where HUD funds are used to rehabilitate or reconstruct housing on a site where housing previously existed, 24 CFR Part 51, Subpart C does not apply if the number of dwelling units on the site is not increased. The responsible entity will need to document in the environmental review record that Subpart C does not apply because the number of people exposed to hazardous operations is not increased. However, if there is an increased number of dwelling units on the site, then compliance with 24 CFR Part 51, Subpart C is required and the responsible entity must not approve projects located at less than the acceptable separation distance from a hazard, as defined in §51.201, unless appropriate mitigation measures are implemented or are already in place. (See 24 CFR 51.202(a)). The acceptable separation distance (ASD) is the distance from above ground stationary containerized hazards of an explosive or fire prone nature, to where a HUD assisted project can be located. HUD has developed an on-line calculation tool to help responsible entities assess the ASD. See <http://www.hud.gov/offices/cpd/environment/asdCalculator.cfm> Additional guidance on 24 CFR Part 51, Subpart C is available in the Department's guidebook "Siting of HUD- Assisted Projects Near Hazardous Facilities" which can be found on-line at <http://www.hud.gov/offices/cpd/environment/training/guidebooks/hazfacilities/>

Appendix A refers to recommended format designed to meet the specific needs of Region 9. For more information specific to Region 9 forms, please contact your Region 9 HUD Environmental Officer. Ernest Molins (northern CA, NV, HI and Guam) at 415-489-6731 or [Ernest.Molins@hud.gov](mailto:Ernest.Molins@hud.gov). Elizabeth McDargh (southern CA and AZ) at 213-534-2578 or [Elizabeth.McDargh@hud.gov](mailto:Elizabeth.McDargh@hud.gov).

Posted 11/20/08

**We already have CDBG programs in places which have received environmental clearance (contingent on site specific reviews) and a Release of Funds from HUD. Certain NSP1 programs will be the same as the current CDBG programs. Can NSP1 funds be considered 'supplemental assistance' per 24 CFR 58.35(b)(7), so as not to require another environmental review and Release of Funds?**

The environmental review needs to be amended and recertified, as appropriate, when there are changes in the scope, magnitude, location or environmental circumstances of a proposal. If these factors regarding a HUD environmentally approved proposal do not change, then the addition of other funds by the same responsible entity will not require additional environmental review or certification or clearance. However, a determination that the project description (including the

scope, magnitude, location or environmental circumstances), as environmentally approved, has not changed, is required.

In lieu of a Request for Release of Funds/Certification for the new NSP1 funds, the program office may ask the responsible entity to send in a copy of this determination and a copy of the first Authority to Use Grant Funds issued for the same project.

*Posted 2/24/09*

**If NSP1 funds are used to acquire a property, are subsequent transfers of the property subject to HUD environmental compliance review requirements?**

Yes. All HUD environmental compliance review requirements apply to federally assisted projects. Therefore, as long as the CDBG requirements apply to the transfers of title and or the use of the property as a result of the transfer, HUD environmental review requirements apply. Listed below are scenarios that show when environmental review requirements will apply:

- 1) When an NSP1-acquired or -assisted property is sold to a homebuyer, or to some other purchaser such as to operate a multifamily building or for a redevelopment purpose, and no more NSP1 funds will be used; or
- 2) When all NSP1 funds that have been committed to the property have been expended on the property (no more than four years after receipt of funds);  
or
- 3) When a land-banked property is dedicated to a permanent use (in no more than ten years).

**The environmental review requirements under NSP1 are taken from the regular CDBG program, but land banking is not allowed under the regular CDBG program. Does that mean that the environmental review requirements do not apply to land banking under NSP1?**

There are no special rules for land banking. However, one must be aware of whether land banking the property will result in a change in land use. If there is a change in land use, the NSP1 grantee must complete both an environmental assessment for compliance with the National Environmental Policy Act is required (§58.35(a)(5)) and a compliance review of only related environmental laws (§58.5). If there is no change in land use, the NSP1 grantee is only required to complete a compliance review of only related environmental laws (§58.5).

**For those communities receiving NSP1 funds indirectly from the state, are they required to participate in the National Flood Insurance Program?**

No. communities receiving NSP1 funds indirectly from the state are not required to participate in the National Flood Insurance Program. However, if a community receives both a direct NSP1 allocation and state-allocated NSP1 funds, they must participate in the National Flood Insurance Program.

*Posted 08/13/09*

**If an NSP grantee plans to acquire property through an auction, how can it demonstrate compliance with the environmental review requirements?**

Any acquisition of real property, using NSP funding, requires completion of a HUD environmental compliance review before a firm commitment to purchase the property can be made. This would include property to be acquired through an auction of real property.

However, there are ways the compliance review process could be expedited. One would be if the entity owning the property anticipates that purchase of the property will use NSP funding, then the local government providing the NSP funds could perform a review on the property before the auction. So when the property is purchased using HUD assistance it has already satisfactorily completed the environmental compliance review. Another would be for a conditional offer to be made at the auction as described in the question and answer above.